

**ASSEMBLY BILL**

**No. 1491**

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**Introduced by Assembly Member V. Manuel Perez**

February 27, 2009

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An act to amend Section 318 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1491, as introduced, V. Manuel Perez. Corporations: boards of directors: diversity.

Under existing law, the Secretary of State maintains a registry of distinguished women and minorities who are available to serve on corporate boards of directors and authorizes the Secretary of State to make this information available to a person or entity that provides data base access or search services, as specified.

This bill would authorize the Secretary of State to make that information available to a person or entity that provides those services only if the registrant agrees.

Existing law requires the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, to report, at least once every 3 years, to the Legislature on the registry's effectiveness.

This bill would instead require the Secretary of State to consult with the relevant Senate and Assembly committees in preparing those reports. The bill would also require the Secretary of State, on or before June 1, 2010, to request recommendations from public pension funds on how to improve the registry's effectiveness.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 318 of the Corporations Code is amended  
2 to read:

3     318. (a) The Secretary of State shall develop and maintain a  
4 registry of distinguished women and minorities who are available  
5 to serve on corporate boards of directors. As used in this section,  
6 “minority” means an ethnic person of color including American  
7 Indians, Asians (including, but not limited to, Chinese, Japanese,  
8 Koreans, Pacific Islanders, Samoans, and Southeast Asians),  
9 Blacks, Filipinos, and Hispanics.

10    (b) For each woman or minority who participates in the registry,  
11 the Secretary of State shall maintain information on his or her  
12 educational, professional, community service, and corporate  
13 governance background. That information may include, but is not  
14 limited to:

15       (1) Paid or volunteer employment.

16       (2) Service in elected public office or on public boards or  
17 commissions.

18       (3) Directorships, officerships, and trusteeships of business and  
19 nonprofit entities, including committee experience.

20       (4) Professional, academic, or community awards or honors.

21       (5) Publications.

22       (6) Government relations experience.

23       (7) Experience with corporate constituents.

24       (8) Any other areas of special expertise.

25    (c) In addition to the information subdivision (b) requires, each  
26 woman or minority who participates in the registry may disclose  
27 any number of personal attributes that may contribute to board  
28 diversity. Those attributes may include, but are not limited to,  
29 gender, physical disability, race, or ethnic origin.

30    (d) In addition to the information subdivision (b) requires, each  
31 woman or minority who participates in the registry may indicate  
32 characteristics of corporations for which he or she would consider,  
33 or is especially interested in, serving as a director. These  
34 characteristics may include, but are not limited to, company size,  
35 industry, geographic location, board meeting frequency, director  
36 time commitments, director compensation, director insurance or  
37 indemnification, or social policy concerns.

1 (e) Any woman or minority may nominate himself or herself  
2 to the registry by filing with the Secretary of State the information  
3 required by subdivision (b) on a form the secretary prescribes. Any  
4 registrant may attach a copy of his or her resume and up to two  
5 letters of recommendation to his or her registration form. Each  
6 registrant's registration form, together with any attached resume  
7 or letters of recommendation, shall constitute his or her registry  
8 transcript.

9 (f) The Secretary of State shall make appropriate rules requiring  
10 registrants to renew or update their filings with the registry, as  
11 necessary to ensure continued accuracy of registry information.

12 (g) The Secretary of State shall assign each registrant a file  
13 number, then enter the information described in subdivisions (b),  
14 (c), and (d) into a data base, using the registrant's file number to  
15 identify him or her. The registry data base shall not disclose any  
16 registrant's name or street address, but may list the city, county,  
17 or ZIP Code of his or her business or residence address. The  
18 secretary shall make data base information available to those  
19 persons described in subdivisions (i) and (j). The secretary may  
20 provide that access either by permitting direct data base searches  
21 or by performing data base searches on written request.

22 (h) The Secretary of State may, *to the extent the registrant has*  
23 *agreed*, also make information contained in the registry data base  
24 available to any person or entity qualified to transact business in  
25 California that regularly engages in the business of providing data  
26 base access or search services; provided, that data base access will  
27 not be construed to entitle the user to access to any registrant's  
28 transcript.

29 (i) The Secretary of State shall make information contained in  
30 a reasonable number of registrants' transcripts available to any  
31 corporation or its representative. A "representative", for purposes  
32 of this subdivision, may be an attorney, an accountant, or a retained  
33 executive recruiter. A "retained executive recruiter", for purposes  
34 of this subdivision, is an individual or business entity engaged in  
35 the executive search business that is regularly retained to locate  
36 qualified candidates for appointment or election as corporate  
37 directors or executive officers.

38 (j) The Secretary of State may also grant access to a reasonable  
39 number of registrants' transcripts to any other person who

1 demonstrates to the secretary's satisfaction that the person does  
2 both of the following:

3 (1) Seeks access to the registry in connection with an actual  
4 search for a corporate director.

5 (2) Intends to use any information obtained from the registry  
6 only for the purpose of finding qualified candidates for an open  
7 position on a corporate board of directors.

8 (k) The Secretary of State may employ reasonable means to  
9 verify that any party seeking access to registry transcript  
10 information is one of those specified in subdivision (i) or (j). To  
11 that end, the secretary may require a representative to identify its  
12 principal, but may not disclose that principal's identity to any other  
13 person.

14 (l) Upon written request specifying the registrant's file number,  
15 the Secretary of State shall provide any party entitled to access to  
16 registry transcripts with a copy of any registrant's transcript. The  
17 secretary may by rule or regulation specify other reasonable means  
18 by which persons entitled thereto may order copies of registrants'  
19 transcripts.

20 (m) Notwithstanding any other provision of law, no person shall  
21 be entitled to access to information the registry contains, except  
22 as this section specifically provides.

23 (n) The Secretary of State shall charge fees for registering with  
24 the registry, obtaining access to the registry data base, and  
25 obtaining copies of registrants' transcripts. The Secretary of State,  
26 in consultation with the Senate Commission on Corporate  
27 Governance, Shareholder Rights, and Securities Transactions, shall  
28 fix those fees by regulation. Fees shall be fixed so that the  
29 aggregate amount of all fees collected shall be sufficient to cover  
30 the total cost of administering the registry program. Registration  
31 fees shall be fixed so as to encourage qualified women and  
32 minorities to participate. Fees shall be deposited into the Secretary  
33 of State's Business Fee Fund.

34 (o) The Secretary of State may make any rule, regulation,  
35 guideline, or agreement the secretary deems necessary to carry out  
36 the purposes and provisions of this section.

37 (p) The Secretary of State may cooperate with the California  
38 Commission on the Status of Women, the California Council to  
39 Promote Business Ownership by Women, the Senate Commission  
40 on Corporate Governance, Shareholder Rights, and Securities

1 Transactions, women's organizations, minority organizations,  
2 business and professional organizations, and any other individual  
3 or entity the secretary deems appropriate, for any of the following  
4 purposes:

5 (1) Promoting corporate use of the registry.

6 (2) Locating qualified women and minorities and encouraging  
7 them to participate in the registry.

8 (3) Educating interested parties on the purpose and most  
9 effective use of the registry.

10 The secretary may also prepare and distribute publications  
11 designed to promote informed use of the registry.

12 (q) The Secretary of State may seek registrants' consent to be  
13 listed in a published directory of women and minorities eligible  
14 to serve as corporate directors, which will contain a summary of  
15 each listed registrant's qualifications. The secretary may  
16 periodically publish, or cause to be published, such a directory.  
17 Only those registrants who so consent in writing may be included  
18 in the directory. The printed directory shall be provided to any  
19 person upon payment of a fee, which the Secretary of State will  
20 determine by regulation, in consultation with the Senate  
21 Commission on Corporate Governance, Shareholder Rights, and  
22 Securities Transactions.

23 (r) The Secretary of State shall implement this section no later  
24 than January 1, 1995.

25 (s) At least once in each three-year period during which the  
26 registry is available for corporate use, the Secretary of State, in  
27 consultation with the *relevant* ~~Senate Commission on Corporate~~  
28 ~~Governance, Shareholder Rights, and Securities Transactions and~~  
29 *Assembly committees*, shall report to the Legislature on the extent  
30 to which the registry has helped women and minorities progress  
31 toward achieving parity in corporate board appointments or  
32 elections.

33 (t) The Secretary of State shall notify each University of  
34 California campus and each California State University campus  
35 of the opportunity to maintain the registry created pursuant to this  
36 section. If more than one campus of the university or state  
37 university expresses interest in maintaining the registry, the  
38 Secretary of State shall select a campus based on a competitive  
39 selection process. If a campus is selected, the Secretary of State  
40 shall transfer the information contained in the registry, free of cost,

1 to that campus. Any University of California or California State  
2 University campus selected to maintain the registry shall do so in  
3 a manner consistent with this section. Funds deposited in the  
4 Secretary of State's Business Fees Fund pursuant to this section  
5 shall be transferred to the university selected to maintain the  
6 registry, and shall be used to administer the registry program. The  
7 Secretary of State shall maintain the registry until a University of  
8 California or California State University campus agrees to do so.  
9 *(u) On or before June 1, 2010, the Secretary of State shall*  
10 *request recommendations from local and state public pension*  
11 *funds on how to improve the effectiveness of the registry in*  
12 *increasing women and minority membership on corporate boards*  
13 *of directors.*

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